CASE NUMBER 80-1422

APR 3 1981
ALEXANDER L. STEV
CLERK

SUPREME COURT OF THE UNITED STATES
OCTOBER 1980 TERM

LOHVLOHN H. REYNOLDS,	:
APPELLANT,	:
VERSUS	:
HAROLD M. REYNOLDS,	:
APPELLEE.	:

ON APPEAL FROM THE COURT
OF APPEALS OF TENNESSEE
EASTERN DIVISION

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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TABLE OF CONTENTS

Table of Contents..... i

Table of Authorities..... ii

Brief In Opposition To Motion To Dismiss Or Affirm..... 1

Certificate of Service..... 6

Appendix F
Brief On Behalf of Appellee In The Tennessee Court Of Appeals (Title Page and Pages 50 and 51)..... 7

TABLE OF AUTHORITIES

Tennessee Code Annotated
Section 36-820..... 1, 3

Tennessee Code Annotated
Section 36-821..... 1, 3

Tennessee Code Annotated
Section 36-822..... 1, 3

Tennessee Code Annotated
Section 36-823..... 1, 3

Tennessee Code Annotated
Section 36-824..... 1, 3

Tennessee Code Annotated
Section 36-825..... 1, 3

Tennessee Code Annotated
Section 36-826.....1, 2, 3

Mitchell v. Mitchell, 594 S.W.2d
699 (Tenn. 1980)..... 1

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

Appellee's Motion to Dismiss or Affirm purports to be based upon four separate grounds. An examination of his argument on these grounds, however, reveals that they all boil down to one argument; i.e., in rendering its decision in this action the trial court did not invoke Tennessee Code Annotated Sections 36-820, 36-821, 36-822, 36-823, 36-824 and 36-826 which were admittedly unconstitutional at the time judgment was entered by the trial court, but rather it relied solely on Tennessee Code Annotated Section 36-825, which was gender neutral and had previously passed constitutional muster in Mitchell v. Mitchell, 594 S.W.2d 699 (Tenn. 1980).

This argument totally ignores the fact that this divorce was granted in favor of the husband, which under Tennessee Code Annotated Section 36-826

resulted in the defendant wife having no entitlement to any part of the husband's real or personal estate either as alimony or in intestacy. Since no alimony was awarded in the Final Order of the trial court and the purported separate property of the parties was determined by the trial court and awarded to its supposed owner, it is apparent that Tennessee Code Annotated Section 36-826 was invoked to terminate the entitlement of Mrs. Reynolds to such alimony and a share of her husband's real and personal estate. In fact, Mr. Reynolds' counsel at pages 50 and 51 of his Brief on Behalf of Appellee before the Tennessee Court of Appeals (Appendix F attached hereto) has acknowledged that Tennessee Code Annotated Section 36-826 "comes into play" in this action.

Moreover, as pointed out in pages 21-24 of the Jurisdictional Statement, a

careful review of the trial judge's Final Order clearly reveals that his entire analysis of the evidence and his conclusions based thereon constitute a direct application of the old Tennessee statutory scheme for property allocations in divorce actions (Tennessee Code Annotated Sections 36-820 through 36-826) requiring different treatment to be accorded to the parties on the basis of sex.

Accordingly, the basic premise of Appellee's Motion to Dismiss or Affirm is incorrect; and the unconstitutional Tennessee Code Section 36-826 was invoked and relied upon by the trial court in rendering a Final Order in this action.

As a direct result of the limitation imposed by Tennessee Code Annotated Section 36-826, Mrs. Reynolds was deprived of any claims she otherwise

had to a very significant amount of property identified at pages 19 and 20 of the Jurisdictional Statement, which property was determined by the trial judge to be the non-marital separate property of the husband.

The fact that no court below has addressed the constitutional issues (which have been briefed and argued below by both parties) raised by Appellant here, certainly does not imply or create a presumption, as Appellee argues, that these issues are insubstantial or are irrelevant to the decisions previously rendered in this case. To the contrary, the failure of the courts below to address these issues in their opinions, judgments and orders is all the more reason for this Court of last resort to do so; for while Appellee seeks to convince this Court that it is not credible to assert (as the Appellant

does) that the trial court applied statutes which the Supreme Court of Tennessee had already declared unconstitutional, as has been demonstrated above and in Appellant's Jurisdictional Statement, that is precisely what happened.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter and the Attorney General of the State of Tennessee with three copies of this Appellant's Brief in Opposition to Motion to Dismiss or Affirm by depositing in the United States Mail copies of same in properly addressed envelopes with adequate first class postage thereon addressed to:

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This 15 day of April, 1981.

T. CULLEN GILLILAND

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

LOHVLOHN H. REYNOLDS,	:	
	:	Appeal as of Right
Plaintiff-Appellant,	:	from the Circuit Court of Hamilton County
Versus	:	
	:	No. CA-536
HAROLD M. REYNOLDS,	:	Hamilton Law
	:	
Defendant-Appellee.	:	

BRIEF ON BEHALF OF APPELLEE

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APPENDIX F

. . . .

Husband having been awarded a divorce, TCA §36-826 comes into play. It provides as follows:

> 36-826. Relinquishment of defendant spouse's interest in plaintiff's estate and right to alimony.
>
> If the bonds of matrimony be dissolved at the suit of the plaintiff spouse the defendant spouse shall not be entitled to any part of the real or personal estate of the plaintiff spouse, in case of such plaintiff's intestacy nor to alimony. However, when the cause of divorce is irreconciliable differences under §36-801, the foregoing provision shall not apply if the parties have entered into a written property settlement

> agreement wherein the plaintiff consents to the payment to the defendant of alimony, either in a lump sum form or periodic payments, provided, that such property settlement is approved by the court granting the decree of divorce.

Thus, Mrs. Reynolds is entitled to no alimony, but the trial court was nonetheless required to make an equitable distribution of the marital properties under TCA §36-825.

. . . .